

Multiple Agency Fiscal Note Summary

Bill Number: 1579 3S HB	Title: Independent prosecutions
--------------------------------	--

Estimated Cash Receipts

NONE

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts	No fiscal impact					
Loc School dist-SPI						
Local Gov. Other						
Local Gov. Total						

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Attorney General	.0	0	0	0	20.8	9,330,000	9,330,000	9,330,000	27.6	12,442,000	12,442,000	12,442,000
Office of Independent Investigations	.0	0	0	0	.0	216,000	216,000	216,000	.0	288,000	288,000	288,000
Total \$	0.0	0	0	0	20.8	9,546,000	9,546,000	9,546,000	27.6	12,730,000	12,730,000	12,730,000

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	No fiscal impact								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
Office of Independent Investigations	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	No fiscal impact								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

Prepared by: Val Terre, OFM	Phone: (360) 280-3973	Date Published: Final 1/31/2024
------------------------------------	---------------------------------	---

Judicial Impact Fiscal Note

Bill Number: 1579 3S HB	Title: Independent prosecutions	Agency: 055-Administrative Office of the Courts
--------------------------------	--	--

Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: Jessica Van Horne	Phone: 360-786-7288	Date: 01/24/2024
Agency Preparation: Chris Conn	Phone: 360-704-5512	Date: 01/29/2024
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 01/29/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/29/2024

192,430.00

Request # 146-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

The substitute would not make any changes affecting the fiscal impact to the Administrative Office of the Courts or the courts.

II. B - Cash Receipts Impact

None

II. C - Expenditures

No or minimal fiscal impact to the Administrative Office of the Courts.

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

NONE

III. B - Expenditure By Object or Purpose (County)

NONE

III. C - Expenditure By Object or Purpose (City)

NONE

III. D - FTE Detail

NONE

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

None

192,430.00

Form FN (Rev 1/00)

Individual State Agency Fiscal Note

Bill Number: 1579 3S HB	Title: Independent prosecutions	Agency: 100-Office of Attorney General
--------------------------------	--	---

Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.0	0.0	0.0	20.8	27.6
Account					
General Fund-State 001-1	0	0	0	9,330,000	12,442,000
Total \$	0	0	0	9,330,000	12,442,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Jessica Van Horne	Phone: 360-786-7288	Date: 01/24/2024
Agency Preparation: Chad Standifer	Phone: 3605863650	Date: 01/30/2024
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 01/30/2024
OFM Review: Val Terre	Phone: (360) 280-3973	Date: 01/30/2024

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Section 1 - Amends RCW 43.10.230. Changes purpose with respect to granting concurrent authority with the Attorney General (AG) and County Prosecutors to cover deaths from the use of deadly force by officers.

Section 2 - Amends RCW 43.10.232. Allows the Attorney General's Office (AGO) concurrent authority to investigate, initiate and conduct prosecutions of crimes involving applicable use of force cases as defined in the chapter. Additionally allows prosecution of related offenses and defendants. AGO is responsible for its expert witness fees and other costs of prosecution.

Section 3 - Amends RCW 43.10.234. Considerations court makes when designating prosecuting authority where an information or indictment is filed by both the AGO and the Prosecuting Attorney. Presumption that a County Prosecuting Attorney has an inherent conflict of interest in any applicable use of force case.

Section 4 - New section. Legislative findings.

Section 5 - New section. Establishment of Independent Prosecution unit, the Office of Independent Prosecutions (OIP). Requires the OIP to contract with, pursuant to Section 10 of the bill, a Special Assistant Attorney General (SAAG), if it receives an Office of Independent Investigations (OII) report for a matter involving (1) a general authority peace officer at a state agency; or (2) an employee of the Department of Corrections (DOC), a limited authority law enforcement agency, or a police department at a public institution of higher education. OIP has the authority to adopt rules.

Section 6 - New section. Sets out authority and role of OIP and has the AG appoint an Independent Counsel (IC) to lead unit.

Section 7 - New section. Creates OIP Advisory Board (OIPAB).

Section 8 - New section. Minimum criteria for IC and term limit.

Section 9 - New section. Sets out powers of IC.

Section 10 - New section. Personnel who IC can contract with or employ.

Section 11 - New section. IC may appoint Assistant Attorneys General (AAG) or SAAG to carry out certain functions.

Section 12 - New section. Nothing prevents law students from working as volunteer or paid interns in OIP.

Section 13 - New section. Applies the Public Records Act, RCW 42.56, and provides rules for disclosure of OIP records.

Section 14 - New section. Provides that no action may be instituted against IC for performing duties in good faith.

Section 15 - New section. Definitions - for purpose of this chapter, "applicable use of force case" means a case arising from investigations of deaths conducted by OII, pursuant to RCW 43.102.030(1)(a) and (b).

Section 16 - Amends RCW 36.27.020. Sets out procedures for a court to transfer cases to OIP when prosecutor has conflict of interest.

Section 17 - Amends RCW 36.27.030. Standard for court to order IC to take over prosecution.

Section 18 - New section. Adds to chapter 36.27 RCW. If County Prosecutor declines to file it must refer case to the OIP.

Section 19 - Amends RCW 43.102.080. Requires an OII investigation to be sent to the County Prosecuting Attorney with jurisdiction and the OIP.

Section 20 - Amends RCW 41.80.400. Excludes IC from collective bargaining unit.

Section 21 - New section. Severability clause.

Section 22 - New section. If funding is not provided by June 30, 2024, the act is void.

Section 23 - New section. Sections 4 through 15 are added to chapter 43.10 RCW.

Section 24 - New section. Sections 2, 3, 16, 17, 18, and 19 of this act effective January 1, 2026.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

GF-S Account 001-1: The newly created Attorney General's Office Independent Prosecutions (OIP) activities would be funded with General Fund-State dollars. No cash receipt impact. There is no client agency to bill for legal services.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Attorney General's Office (AGO) Agency Assumptions:

Legal services associated with the enactment of this bill will begin on January 1, 2026 (FY 2026).

Location of staffing is assumed to be in a non-King County office building.

Total workload impact in this request includes standard assumption costs for goods & services, travel, and capital outlays for all FTE identified.

Agency administration support FTE are included in the tables. The Management Analyst 5 FTE (MA), is used as a representative classification. An example ratio is for every 1.0 Assistant Attorney General FTE (AAG), the AGO includes 0.5 Paralegal 1 FTE (PL1) and 0.4 MA.

Agency Administrative staff included in this request:

Information Technology (IT) Support Technician 2 for personal computer and software support, local area network (LAN) management, and ongoing technical support of other business applications.

IT Security-Senior Specialist to conduct and maintain data security of business systems used by the AGO, manage ongoing IT risk assessments and audits, and ensure compliance with applicable laws, regulations and statewide security policies related to data sharing with local law enforcement and Office of Independent Investigations (OII) investigators.

MA to support for ongoing timekeeping, payroll, budgeting and projection of expenditures, accounting transactions and report generation.

Contracts Specialist 2 (CS2) to help draft expert witness and other litigation related contracts, interpreter and potential Special Assistant Attorneys General (SAAG) contracts. This includes but is not limited to, contract preparation assistance, review, tracking, data entry, reporting and payment review.

Policy Analyst (PA) Administrative support to create, convene, and maintain the Office of Independent Prosecutions Advisory Board (OIPAB) in the performance of the duties outline in Section 7. Provide assistance and support for regular meetings. Administrative support to author and submit to the Legislature a report on the new OII by November 1, 2026.

1. Assumptions for a new AGO Independent Prosecution Division (OIP):

If this legislation is enacted, the AGO anticipates receiving 25-50 cases per year, with a likely average of 30 cases per year. Caseloads are projected from caseload projections adopted from OII, which will investigate all cases referred to the OIP if this bill is enacted. An average of 30 case per year was used, but cases may spike as high as 50 in a given year based on historical data. It is expected that two to three cases per month will be referred and that over time caseloads will accumulate for each AAG as these cases are time-consuming to review and even more time-consuming to litigate if charged (trial proceedings may last two to three years, followed by potential appeals). It should also be noted that crimes arising from the use of deadly force, or investigation of the use of deadly force incident, may also be reviewed and charged by the AGO under this bill, which could periodically cause small increases in caseloads. It should further be noted that the AGO's jurisdiction is tied to OII's, and OII may also investigate police use of deadly force cases that predate OII, which could also increase caseloads. See RCW 43.102.030(1)(b); RCW 43.102.050(4). OIP assumes it will review all incidents of police use of deadly force resulting in death and investigated by OII. Although the County Prosecutors retain concurrent jurisdiction over these cases under the bill, there are provisions in the bill that require the County Prosecutor to overcome a presumption of conflict of interest that will be difficult for the County Prosecutor to overcome in order to retain authority over the case. Additionally, many prosecutors may wish to cede authority to the AGO as it will cost the County Prosecutor nothing to send these complex, expensive, time-consuming, and often controversial cases to the AGO. OIP anticipates an average of one trial per FY starting in FY2025. Crime Victim Advocates (CVA) are not requested based upon information from OII that they will provide a CVA for all cases resulting in death and the CVA will work with the surviving family from the start of the case through the end of the case, including any prosecution. OIP assumes that data storage costs will increase every year as these cases usually involve significant audio and video evidence and the AGO has a policy to retain discovery in homicide cases for perpetuity. OIP assumes one conflict case per year on average that will require the AGO to hire a SAAG to review and potentially prosecute a use of deadly force case where a state law enforcement agency is involved (Washington State Patrol (WSP), Department of Fish & Wildlife (DFW), state university police departments).

One Senior AAG-Division Chief- Independent Counsel (IC)

Organize and create the division

Interview employee candidates and make hiring decisions as required by Section 11 of the bill

Manage and supervise the division

Manage the budget

Provide for necessary training for division employees

Acquire necessary resources for the division

Complete performance evaluations

Liaison with law enforcement, county prosecutors, others

Manage public records response processes

Manage responses to constituent inquiries

Liaison with AGO Media Relations

Supervise Managing AAGs (MAAG), Administrative Operations Manager (AOM), and Paralegal 3 (PL3) and evaluate their performance

Create and cause training required by Section 10 of the bill

Cause rulemaking as needed and allowed by Section 5

Two MAAGs

Serve as trial and review team leaders

Supervise 6 AAGs and Data Consultant 2 (DC2)

Performance evaluations

Handle caseload as described below

Manage public records issues and responses as required by Section 13 of the bill

Manage responses to constituent inquiries

Six AAGs

Work with investigators on the investigation

Providing consultation

Brainstorming investigative ideas

Reviewing search warrants

Obtaining necessary court orders

Cause Garrity reviews. This means an entity screening the completed investigations before a prosecutor reviews the case to ensure no compelled statements from police officers—which cannot be considered—are included in the investigative file

Review the investigation for potential criminal charges as required by Section 9(2) of the bill

Review investigative reports, lab reports, autopsy reports, medical reports, and witness statements, audio and video evidence

Discuss case with investigators

Consulting experts

Medical doctors, including forensic pathologists

Use of force experts

Firearms

Toxicology

Requesting follow-up investigation by investigating agency

Staffing cases with colleagues and supervisors

Drafting memos

Meetings

Presentations

Preparing letters or reports explaining decisions to decline criminal charges

Meetings with surviving person subjected to deadly force or family of deceased

Preparing charging documents

Prosecuting charged cases (2 AAGs per case)

Legal research

Drafting pleadings

Filing motions

Responding to motions

Court appearances and evidentiary hearings

Meetings and interviews with law enforcement investigators

Meeting and interviewing prosecution civilian and expert witnesses

Interviewing defense witnesses

Attending defense interviews of prosecution witnesses

Meetings with the victim or family of deceased

Meetings with AGO staff (supervisors, co-counsel, PLs, investigators)

Trials

Travel for hearings, interviews, meetings and trials in all 39 counties

Appeals

Respond to interlocutory appeals

Defend convictions on appeal

Respond to post-conviction motions/personal restraint petitions

Court appearances

Public Records (Section 13 of the bill)

Provide advice to AGO staff responding to Public Records Requests (PRR)

Every case is likely to be the subject of PRR

Review and redact AGO documents (correspondence, investigative materials, etc.) as necessary in response to PRRs

Respond to constituent correspondence and inquiries

Supervise, assign work to legal interns as allowed by Section 12

Rulemaking per Section 5

One AOM

Manage the day to day administrative and fiscal operations of the division

Pay all invoices, order office supplies

Manage expert witness contracts

Work with Administrative (ADM), Fiscal (FIS), and Information Services (ISD) Divisions to meet the needs of the division

One PL3

Supervise Paralegal 2 (PL2) and PL 1 positions

Performance evaluations

Manage public records intake and responses as required by Section 13 of the bill

Carry partial caseload (described below for PL2s)

Four PL2

Respond to PRR

Review records

Redact records

Ensure AAGs review and redact records as necessary

Coordinate discovery from completed investigations

Organize investigative files received from investigating agency for review by AAGs

Run criminal histories as needed

Coordinate meetings and interviews of witnesses for individual cases

Support assigned trial prosecutors for charged cases

Handle discovery

Subpoenas for witnesses

Subpoenas duces tecum

Coordinate witness interviews and court appearances

Use software for trial organization and presentation of evidence

Create trial exhibits

Assist at trial with courtroom technology and witness scheduling

One DC3

Create data points from the review and prosecution of these cases

Collect and organize data in a database

Reach out to local, state, and federal criminal justice partners for data and information as needed

Analyze data as needed on specific cases

Cell phone data

Timelines

Police agency organization, policies and practices

Criminal organizations

Bank records

Other

Create annual (or other) report of the division's cases and outcomes

Office Space to house new OIP in Olympia: \$300,000 per FY based upon current market lease rates for Bristol Court building.

Expert Witnesses: \$500,000 per FY. Some cases will require no paid expert consultation while other cases will require extensive use of experts (use of force experts, pathologists, medical experts, audio and video experts, etc.)

SAAG: \$500,000 per FY. Sections 5 and 10 require and permit the AGO to contract with an attorney to serve as an AAG for cases where a state agency peace officer used deadly force, or where the AGO has a conflict of interest for unforeseen reasons. It is anticipated that a SAAG may be necessary for one case per year based upon historical use of deadly force by the WSP, less than one incident per year on average. Estimates are based upon an attorney rate of \$500 per hour for 1,000 hours.

Contract interpreter services \$50,000 for witnesses, injured parties, or family of deceased where English is not their first language. \$150 per hour x 330 estimated annual hours = \$150,000 per FY.

Data storage costs: \$250,000 per FY for anticipated large volumes of video evidence (police body-worn camera video, police dash camera video, cell phone video, doorbell video, store security camera video).

Video Files (720p HD at 30 frames per sec) and 3.5 gigabyte (GB) per hour.

10 Videos per case at 35 GB per case.

50 cases per FY = 1,750 GB per FY.

Everlaw costs (2023 estimated rate) totals \$9,960 per fiscal month.

\$119,520 annual cost is rounded up to \$120,000 per FY.

File retention from the previous FY is required as well as new electronic files for the current FY \$119,520 annual cost is rounded up to \$120,000 per FY. This total is assumed to increase by \$120,000 each FY. File retention from the previous FY is required as well as new electronic files for the current FY.

Statutorily required and other regular training (Section 10): \$25,000 per FY

AGO support for OIPAB (Section 7): \$14,500 per FY for fiscal years 2024 through 2026.

Litigation Travel \$100,000 per FY for AAG and PL: travel for potential crime scene response, attend autopsies, meetings with investigators, meetings with medical examiner and doctors, meetings with injured person or family of deceased, interviewing witnesses, attend defense interviews, court appearances, and trial.

OIP: Total non-King County workload impact:

FY 2026: \$3,274,000 0.5 DC, 1.0 MAAG, 3.0 AAG, 0.5 AOM, 0.5 PL3, 2.0 PL2, 2.0 PL1, 0.5 DC2, 2.7 MA, 0.3 IT Support Tech 2, 0.3 IT Security Senior Specialist, 0.5 PA and 0.2 CS2, this includes litigation costs of \$1,189,500

FY 2027: \$6,056,000 for 1.0 DC, 2.0 MAAG, 6.0 AAG, 1.0 AOM, 1.0 PL3, 4.0 PL2, 4.0 PL1, 1.0 DC2, 5.3 MA, 0.5 IT Support Tech 2, 0.5 IT Security Senior Specialist, 1.0 PA and 0.3 CS2, this includes litigation costs of \$1,889,500

FY 2028: \$6,161,000 for 1.0 DC, 2.0 MAAG, 6.0 AAG, 1.0 AOM, 1.0 PL3, 4.0 PL2, 4.0 PL1, 1.0 DC2, 5.3 MA, 0.5 IT Support Tech 2, 0.5 IT Security Senior Specialist, 1.0 PA and 0.3 CS2, this includes litigation costs of \$1,995,000

FY 2029: \$6,281,000 for 1.0 DC, 2.0 MAAG, 6.0 AAG, 1.0 AOM, 1.0 PL3, 4.0 PL2, 4.0 PL1, 1.0 DC2, 5.3 MA, 0.5 IT Support Tech 2, 0.5 IT Security Senior Specialist, 1.0 PA and 0.3 CS2, this includes litigation costs of \$2,115,000

2. The AGO Government Compliance & Enforcement Division (GCE) has reviewed this bill and determined it will not increase or decrease the division's workload in representing the OII. Therefore, no costs are included in this request.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	0	0	0	9,330,000	12,442,000
Total \$			0	0	0	9,330,000	12,442,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years				20.8	27.6
A-Salaries and Wages				4,229,000	5,638,000
B-Employee Benefits				1,316,000	1,754,000
C-Professional Service Contracts				1,500,000	2,000,000
E-Goods and Other Services				2,100,000	2,804,000
G-Travel				185,000	246,000
Total \$	0	0	0	9,330,000	12,442,000

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Admin Office Manager	100,000				0.8	1.0
Assistant Attorney General	129,100				4.5	6.0
Contracts Specialist 2	105,000				0.3	0.3
Data Consultant 2	80,464				0.8	1.0
Division Chief	150,000				0.8	1.0
IT Security - Senior/Specialist	124,070				0.4	0.5
IT Support Technician 2	62,888				0.4	0.5
Management Analyst 5	95,184				4.0	5.3
Managing AAG	135,600				1.5	2.0
Paralegal 1	71,144				3.0	4.0
Paralegal 2	76,188				3.0	4.0
Paralegal 3	78,900				0.8	1.0
Policy Analyst (Exempt)	95,000				0.8	1.0
Total FTEs					20.8	27.6

III. D - Expenditures By Program (optional)

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Headquarters Administration (ADM)				256,000	340,000
Financial Services Division (FIS)				377,000	504,000
Facilities Division (FST)				450,000	600,000
Information Services Division (ISD)				251,000	334,000
New Division - Office of Independent Prosecutions (OIP)				7,996,000	10,664,000
Total \$				9,330,000	12,442,000

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 1579 3S HB	Title: Independent prosecutions	Agency: 229-Office of Independent Investigations
--------------------------------	--	---

Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
Account					
General Fund-State 001-1	0	0	0	216,000	288,000
Total \$	0	0	0	216,000	288,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Jessica Van Horne	Phone: 360-786-7288	Date: 01/24/2024
Agency Preparation: Kathy Cody	Phone: (360) 480-7237	Date: 01/29/2024
Agency Approval: Jamie Langford	Phone: (360) 902-0422	Date: 01/29/2024
OFM Review: Val Terre	Phone: (360) 280-3973	Date: 01/30/2024

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

The third substitute of HB 1579 changed the effective date of sections 2,3,16,17,18, and 19 to January 1, 2026. This didn't impact OII's previous fiscal note assumptions.

The second substitute of this legislation will no longer require OII to conduct the conflict-of-interest investigation of the prosecuting attorney. This eliminated the need for an additional FTE. The substitute legislation also reduced the AGO cost based on how we the Office will engage with the AGO on the cases referred to the Independent Prosecutor or the Prosecuting Attorney.

New fiscal impacts for the second substitute are as follows:

Sec (2)(a) The attorney general's office of independent prosecutions shall have concurrent authority and power with the prosecuting attorneys to review investigations and initiate and conduct prosecutions of crimes involving the use of deadly force by involved officers as described in chapter 43.102 RCW. "Prosecution" includes appeals and requests for postconviction relief.

This section could require additional resources in the Office of Independent Investigations (OII) for staff time to communicate with both the AG staff and local prosecuting authority as conflicts of interest are being determined.

Sec (9)(a) Upon the completion of an investigation authorized under this chapter, the office shall send its completed investigation and referral to both the county prosecuting attorney of the jurisdiction in which the offense occurred and the office of independent prosecutions in accordance with protocols established under RCW 43.102.050(2)(c)(viii), and include any information, if known, regarding the presence of a conflict of interest.

This section will require OII to make a referral to both the AG Independent Prosecution as well as the local PA and if known, includes any information regarding the presence of a conflict of interest.

This bill contains a null and void clause if this bill is not enacted by June 30, 2023.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

This legislation will increase the current contracted services OII pays to the AGO. Based on an average of 27 cases of use of deadly force incidents from 2020 - 2023 (39, 13, 32, and 21 cases, respectively), AGO costs are expected to increase to \$72,000 starting in the 6th fiscal month of FY2026 and \$144,000/year ongoing if this bill is enacted.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	0	0	0	216,000	288,000
Total \$			0	0	0	216,000	288,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts					
E-Goods and Other Services				216,000	288,000
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	0	0	0	216,000	288,000

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 1579 3S HB

Title: Independent prosecutions

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

Cities: Indeterminate impacts to participate on the Office of Independent Prosecutions Advisory Board

Counties: Same as above

Special Districts:

Specific jurisdictions only:

Variance occurs due to:

Part II: Estimates

No fiscal impacts.

Expenditures represent one-time costs:

Legislation provides local option:

Key variables cannot be estimated with certainty at this time: Appointees to Advisory Board; number of meetings; whether travel is required

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: Alice Zillah	Phone: 360-725-5035	Date: 01/31/2024
Leg. Committee Contact: Jessica Van Horne	Phone: 360-786-7288	Date: 01/24/2024
Agency Approval: Allan Johnson	Phone: 360-725-5033	Date: 01/31/2024
OFM Review: Val Terre	Phone: (360) 280-3973	Date: 01/31/2024

Part IV: Analysis

A. SUMMARY OF BILL

Description of the bill with an emphasis on how it impacts local government.

CHANGES BETWEEN THIS VERSION AND PRIOR VERSION OF THE BILL:

The changes made in the third substitute do not affect the indeterminate costs discussed below.

SUMMARY OF CURRENT BILL:

Sec. 1 amends RCW 43.10.230. The purpose of RCW 43.10.232 is to grant authority to the Attorney General's Office (AGO) concurrent with the county prosecuting attorneys to investigate and prosecute crimes, including incidents of use of deadly force by an involved officer as those terms are defined in RCW 43.102.010.

Sec. 2 amends RCW 43.10.232. The AGO's Office of Independent Prosecutions (OIP) shall have concurrent authority and power with the prosecuting attorneys to investigate, initiate, and conduct prosecutions of crimes involving police use of deadly force in the state of Washington. Nothing in this subsection affects the authority of the prosecuting attorney to conduct prosecutions of crimes committed by an individual who is the subject of the use of force action by the involved officer. The AGO shall not be responsible for defense costs, including defense attorneys' fees, defense expert witness fees, or any other cost related to the defense in a criminal prosecution brought pursuant to this subsection. The county in which the action is filed shall be responsible for court administration costs and public defense costs if the defendant so qualifies.

Sec. 3 amends RCW 43.10.234. In any judicial proceeding under this subsection, in order to be designated the prosecuting authority, the county prosecuting attorney must overcome a presumption that the county prosecuting attorney has an inherent conflict of interest in any matter arising from an investigation within the scope of the office of independent investigations. Similarly, in any judicial proceeding under this subsection, the attorney general must overcome a presumption that the attorney general has an inherent conflict of interest in any matter in which an investigation of the use of deadly force involved any general authority peace officer at a state agency, an employee of the department of corrections, an employee of a limited authority law enforcement agency, or an employee of a police department at a public institution of higher education.

Sec. 7 creates a new section. The Office of Independent Prosecutions Advisory Board is created. Its membership includes one defense attorney, two prosecuting attorney representatives, and two active or retired law enforcement personnel.

Sec. 16 amends RCW 36.27.020. In any case involving potential prosecution of a crime involving use of deadly force by an involved officer, the prosecuting attorney shall determine if recusal is necessary under the ethical rules applicable to all lawyers or to preserve public confidence.

Sec. 18 create a new section in RCW 36.27. If the prosecuting attorney makes a determination not to file criminal charges in the case, the prosecuting attorney or conflict-free special deputy prosecuting attorney must refer the case and all investigative materials concerning the case to the independent prosecutions unit of the AGO within 30 days of the decision to not file criminal charges.

B. SUMMARY OF EXPENDITURE IMPACTS

Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.

The legislation would have indeterminate expenditure impacts for local government.

The bill creates the Office of Independent Prosecutions Advisory Board, whose members include a defense attorney, two prosecuting attorney representatives, and two active or retired law enforcement personnel. To the extent that these members are current employees of cities and counties, local governments would incur costs for their participation on the

Advisory Board. Because the number of meetings, location, and other work elements for the Advisory Board have not been determined, these costs cannot be estimated.

According to the Washington Association of Prosecuting Attorneys, county prosecutors already review cases of deadly force by law enforcement officers for potential conflicts of interest, and refer cases to other prosecutor offices as needed. As such, the requirement for the prosecuting attorney to determine if recusal is necessary in these cases would not result in any additional costs.

C. SUMMARY OF REVENUE IMPACTS

Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.

The legislation would have no revenue impacts for local government.

SOURCES:

Washington Association of Prosecuting Attorneys